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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE: JUUL LABS, INC. ANTITRUST
LITIGATION**

This Document Relates To:

ALL DIRECT PURCHASER ACTIONS

Case No. 3:20-cv-02345-WHO

**DECLARATION OF PLAINTIFF MALLORY
FLANNERY IN SUPPORT OF DIRECT
PURCHASER PLAINTIFFS' OPPOSITION
TO DEFENDANT JUUL LABS, INC.'S
MOTION TO COMPEL ARBITRATION**

Date: April 21, 2021

Time: 2:00 p.m.

Courtroom: 2

Judge: Hon. William H. Orrick

1 I, Mallory Flannery, hereby declare as follows:

2 1. I am an individual over 18 years old. I currently reside in Des Moines, Iowa. I am a
3 named Plaintiff in the above captioned action. I make this declaration based upon my personal
4 knowledge and could competently testify to the facts herein if called to do so. I make this declaration
5 pursuant to 28 U.S.C. § 1746 in support of Direct Purchaser Plaintiffs' Opposition to Defendant JUUL
6 Labs, Inc.'s Motion to Compel Arbitration.

7 2. I began using JUUL Labs Inc. ("JLI") products in 2018. At first, I purchased JLI
8 products exclusively from "brick and mortar" retailers. I purchased JLI products weekly. I do not recall
9 seeing JLI's Terms and Conditions or notice of such terms on the packaging, inside the packaging, on
10 the receipts or any other materials associated with these JLI products.

11 3. By the time I visited JLI's website to make a purchase, I was physically addicted to
12 nicotine. I used JLI's website to make a purchase because a tobacco flavor ban went into effect, and the
13 only way I could purchase flavored JUULpods was by using the website. If I could have purchased
14 flavored JUULpods from a convenience store, I wouldn't have used JLI's website.

15 4. On February 26, 2019, I visited JLI's website, registered an account, and purchased a
16 "Cucumber Refill Kit" and a "Mango Refill Kit." I believe I registered an account and made the
17 purchases using my iPhone X. I do not recall seeing any disclosure about JLI's Terms and Conditions,
18 notice about Terms and Conditions, or hyperlinks to Terms and Conditions. I have reviewed the
19 document identified as Exhibit 5 of the declaration of Eaden Jacobs submitted in support of JUUL's
20 Motion to Compel Arbitration, which purports to be "a printout of the Sign Up/Log In page of the JLI
21 Website, www.juul.com, as it existed in February 2019." ECF Nos. 210-1, ¶ 6; 210-6. While I do not
22 have perfect recollection of my online transaction from more than a year ago, I do not recall seeing any
23 disclosure of JLI's Terms and Conditions above a "Sign Up" button and I do not believe I saw this
24 disclosure, or any similar disclosure, during my visit to JLI's website. I do not recall whether the
25 disclosure was hidden under my keyboard as I typed my email address and password using my iPhone X
26 to create an account. Nor am I able to test whether my keyboard hid the disclosure because an archived
27 version of JLI's "Sign Up" page is not available for February 26, 2019 on www.archive.org (the
28 "Wayback Machine"). If I had seen it, I don't believe I would have recognized that it contained

1 hyperlinks. The phrase “Terms and Conditions” is in the same small print as the rest of the disclosure.
2 The entire disclosure appears to be in light black text on a gray background, and if I wasn’t already
3 looking right at the hyperlink, it wouldn’t jump out at me. Nor is Terms and Conditions highlighted in a
4 way that would suggest it is a hyperlink. Nor do I recall clicking a box next to this disclosure, and
5 because JLI did not provide an exact date that this Sign Up/Log In page was available on the JLI
6 Website, I cannot be sure this version of the Sign Up/Log In page was what I viewed.

7 5. I do not recall seeing any Terms and Conditions, or notice of Terms and Conditions, on
8 or inside the product packaging, on sales receipts, on the shipping label, or on any other materials
9 associated with my purchase using JLI’s website.

10 6. I did not agree to arbitration or to waive my right to proceed with a class action. I did not
11 read or understand the Terms and Conditions.

12 7. I have never read JAMS’s Optional Expedited Arbitration Procedure.

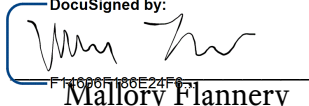
13 8. I was never provided an executed copy of JLI’s Terms and Conditions, nor was I
14 provided a copy of JAMS’s Optional Expedited Arbitration Procedure.

15 9. I did not expect that, by registering on a website to make a purchase, I would waive my
16 right to jury trial and to proceed on a class basis for claims related to the products themselves—
17 especially since the only disclaimer relates to “registering” on JLI’s website.

18 10. I did not know what Terms and Conditions meant when I created an account or made
19 purchases using JLI’s website. I did not and do not understand that phrase to refer to agreements to
20 arbitrate or to waive rights to litigate claims as a class action. I would have expected JLI’s Terms and
21 Conditions to be limited to information that you needed to be 21 years or older to purchase the product,
22 and information about the health effects of using nicotine products.

23 I declare under penalty of perjury that the foregoing is true and correct.

24
25 Executed: 3/5/2021,
26 in Des Moines, Iowa

By: 
Mallory Flannery